

**MINUTES**  
**(Audio Recording Is Available)**  
**SPECIAL MEETING**  
**AGENDA**  
**BOARD OF ZONING APPEALS**  
**NOVEMBER 13, 2012**  
**LAKEWOOD CITY HALL**  
**6:30 P.M.**  
**AUDITORIUM**

The meeting was called to order at 6:34 P.M.

**1. Roll Call.**

Members Present

Cynthia Bender  
Kyle Krewson, Vice Chairman  
Jennifer Matousek  
James Nagy, Chairman  
Samuel O'Leary

Others Present

Mary Leigh, Secretary, DCD Programs Manager, P&D  
Jeff Fillar, Asst. Bldg. Comm., Residential  
Kevin Butler, Law Director  
Jennifer Mladek, Assistant Law Director

**2. Opening Remarks.**

There was no reading of the Opening Remarks.

**OLD BUSINESS**

**APPEAL FROM BUILDING PERMIT P12-003814**

**3. Docket 10-43-12                      16510 Kenneth Lane**

On behalf of Edward and Mary Sue Denk, Benjamin J. Ockner, of Berns, Ockner & Greenberg, LLC, appeals the issuance of building permit P12-003814, issued August 22, 2012, and objects to the installation of a fence at the subject property as permitted. The property is located in an R1H, Single Family High Density district. This item was deferred at the meeting of October 18, 2012 to a special meeting held within the next thirty days. (Page 2)

**4. Docket 04 10-44-12                      16510 Kenneth Lane**

On behalf of Barbara Parker, Edward R. Reichel, Attorney at Law, appeals the issuance of building permit P12-003814, issued August 22, 2012, and objects to the installation of a fence at the subject property as permitted. The property is located in an R1H, Single Family High Density district. This item was deferred at the meeting of October 18, 2012 to a special meeting held within the next thirty days. (Page 14)

Present were Benjamin T. Ockner, representative of the appellants; Mr. and Mrs. Denk, Steven M. Ott, representative of the property owners; Mr. and Mrs. Fannin, and Kevin Butler, Law Director for the City of Lakewood. Ms. Mladek announced a time limit of ten minutes for the restatement of their respective cases; reservation of speaking time would be allowed and tracked. Mr. Ockner

was assured that his two communications had been distributed to the Board members via e-mail; Ms. Leigh had them in hard copy form for anyone who wanted them.

Mr. Nagy said he would allow discussion of the communications and would allow time for any rebuttals.

Reserving four minutes of his speaking time, Benjamin Ockner, Berns, Ockner & Greenberger, LLC, 3733 Park East Drive, Suite 200, Beachwood, argued that the City's interpretation that because a specific distance for the Kenneth Avenue building line was omitted from the City of Lakewood's building line map meant that the building line for Kenneth Lane was zero was wrong. He presented photographs downloaded from Google that had been photoshopped with accessory structures (marked "Exhibit P" for the record by City staff), and argued the fence was an accessory structure. He referred to his first communication Dated November 8, 2012. He stated that in this instance, as an example the city's parking requirements, meant there was no front yard and thus the owners, Mrs. And Mrs. Fannin, could do what they wanted, including park in their front yard. In fact, any of the neighbors whose property lines extending across Kenneth Lane, could put up structures anywhere in there yards. At this point, Mr. Ockner's allotted time ended.

Not reserving any of his speaking time, Steven M. Ott, Ott & Associates, Co., LPS, 55 Public Square, Suite 1400, Cleveland, said it was not a parking issue, and the Google photos were irrelevant; the issue was whether a permit had been issued to the Fannins by the Division of Housing and Building correctly and properly. The fences were erected according to the ordinances. There was no confusion between a building line and a front yard depth. He read Requirement 1153 that the fences must be on or adjacent to the property line, and the subject fences were adjacent to the property line of the Fannin's property. He argued the omission of a building line was not due to any error on the part of the City of Lakewood.

Ms. Mladek said that three minutes of speaking time remained for Mr. Ott.

Reserving two minutes, Kevin Butler, Lakewood's Law Director, defended the City's Building Commissioner. The City did not produce written correspondence in defense; in lieu of said written correspondence, Mr. Butler distributed ordinances adopted by Lakewood's City Council in respect to Building Line Maps and various intersections and streets from 1924 through 1988. The 2010 Building Line Map was adopted by City Council and indicated no building line on Kenneth Lane. The Board of Zoning could not establish a building line; it was City Council's responsibility. The chapter about fences stated no fence could be built beyond the building line, a line established by the map. Wooden fences were not accessory structures as per the code. Accessory structures had area such as a gazebo, a deck, or a garage; accessory structures were used to calculate lot coverage. A three foot setback for a fence was never required in Lakewood. Told his eight minutes were done, Mr. Butler opted to use his remaining two minutes and to reserve none for a rebuttal. If the Board agreed with Mr. Ockner, the result could be two building lines on the Fannin property; one on Kenneth Drive and one on Kenneth Lane.

Mr. Ockner differed with Mr. Ott's statements and reiterated his interpretation of the definitions of front yards, building lines, set back requirements, and accessory structures within the City of Lakewood.

Mr. Ott asked for questions. Mr. Nagy asked about distance for the placement of the side yard fence. The fence parallel to Kenneth Lane stopped at the fifty foot setback from Kenneth Drive as

per the Building Line Map; it was noted on the permit. It was different from the private drive, Kenneth Lane.

Mr. Fillar said his work was based on the code with which he worked daily; he did the work for fourteen years. He reviewed the application carefully to see if there was a fifty foot setback on Kenneth Drive; yes, and if there was one on Kenneth Lane; no. He based it on the setback from Kenneth Drive.

Mr. Nagy asked Mr. Ockner the same question asked of Mr. Ott. Mr. Ockner said it could not go beyond Kenneth Lane. Part of it went to Kenneth Lane and jogged west which took it beyond any possible building line. The fence could go up to Kenneth Lane because of the confusion in calculating the building line in the front yard setback section. There was a distance from the house foundation and the right-of-way in which they could extend their fence but only moving from the house toward Kenneth Lane. Where Kenneth Lane intersected Kenneth Drive was a driveway, and it was subject to an easement. Four homes fronted Kenneth Lane, and the building line extended from the Fannin's home but not beyond the right-of-way of the private Kenneth Lane street.

Sue Denk, 1039 Kenneth Drive, felt there was a problem because the Fannins had received a permit for a front yard fence, and if she wanted to erect a fence on her front yard, she would be denied.

Judy Weatherman, 1031 Kenneth Drive, read her letter into record. She did not like the fences and was disappointed. She felt the fence created a safety hazard; the fire trucks would not be able to access the property if there were an emergency.

Angela Shoven, 1035 Kenneth Drive, considered all of the parties as friends. Turmoil ensued as a result of the fence, and the ambiguity of Kenneth Lane was cause for multiple interpretations. The fence was the wrong thing for the community.

Barb Parker, 1047 Kenneth Drive, spoke of last month's meeting and the granting of a variance for another application regarding a fence in the front yard. She questioned the front and side yards of the subject property; the fence was in their front yard. She gave a letter to the Board from Patricia and Isaac Barley, 1060 Kenneth Drive (made part of the record).

R. Emmett Moran, 1042 Kenneth Drive, stated he was an Attorney who did not practice Municipal law but was a trial lawyer. He did not like the fence and said the Board had an opportunity to make things right.

Ms. Mladek reminded the Board that the question before them was if the decision of the Assistant Building Commissioner, Residential should be upheld. Statements were made about the aesthetics of the fence, yet there were no requirements for the fence to appear before the Architectural Board of Review for approval.

Mr. Nagy opened the session to the Board members for discussion.

Mr. Krewson asked Mr. Fillar about the safety issue, and if the fence prohibited a fire truck or ambulance from reaching its destination to any house on Kenneth Lane. Mr. Fillar replied that Kenneth Lane was wide enough for a fire truck, and the Fire Department assured him that

porches, decks, ramps, fences, any wooden structures in the front of houses did not bother them as they would knock them over.

Mr. Nagy disagreed with Mr. Butler that a fence was not an accessory structure. The code was clear. Code 1153 contemplated a fence being on the line or adjacent to the line. He felt the permit had been issued properly. The placement of the fence, as per the building line and the Building Line Map, "carried the day" for him. He sympathized with them and felt the aesthetics of the fence detracted from the neighborhood. He said the Board was bound to adhere to the ordinance as drawn by City Council.

Ms. Bender directed a question to Mr. Butler regarding the establishment of the building line, the Building Line Map, and the history. It was her understanding they could be changed, modified through City Council only, the last being done in 2010. Mr. Butler said the Board of Zoning Appeals did not have the authority to change, modify the Building Line Map. The Board, at times, had the authority to review decisions in respect to the calculation of what was the front yard in situations where there was no building line but did not give the Board the privilege to draw a building line on a Building Line Map where one did not exist. In his view, the fence regulations went directly to the Building Line Map; not to a front yard calculation.

Ms. Matousek spoke as a property owner and fellow citizen of Lakewood, that living in close proximity to neighbors was one of the things she enjoyed about the Boards, and that they were all working together as a community. It was one of the reasons she volunteered her time; to help neighbors resolve their issues. For her fellow citizens, she wanted to say the most disappointing thing was the issue that the neighbors had reached a point where they could not work out the problem any other way than for the meeting. She found it to be heartbreaking and felt there was no legislation that could fix it or produce harmony in the neighborhood. It was disappointing as a resident.

Mr. O'Leary agreed with his fellow Board members that there was not enough ambiguity in the code or revising the Building Line Map was within their prevue, but there appeared the facts and circumstances of the case should indicate to City Council that the Building Line Map might need to be reconsidered to address those properties without building lines.

Mr. Krewson heard the concerns from citizens about the aesthetics of the fence and agreed with Mr. O'Leary there might be room to improve the Building Line Map; however, currently before the Board was the code. The lot was unique, and he had reviewed all of the documents. He did not agree with Mr. Ockner's argument that the fence was an accessory structure. Mr. Ott spoke of the fifty foot setback, the subject property went to the public right-of-way with a fence outside the building line setback; he did not see an issue.

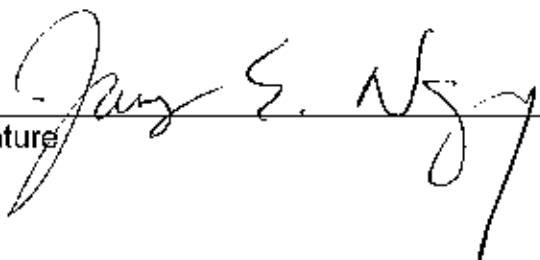
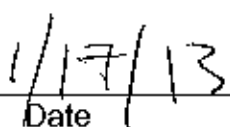
Ms. Bender echoed Ms. Matousek's comments and was saddened. Fences were designed to protect pets and children. She was not sure of the fence's purpose but agreed with her Board members that their purpose was not to change the Building Line Map.

Angela Shoven, 1035 Kenneth Drive, asked if the interpretation permitted the continuation of the fence being extended in front of the other three homes to the end of Kenneth Lane. Mr. Nagy replied the Board was not prevue to any private agreement between the Fannins and the other property owners. Ms. Miadek reminded the chairman the question was about a permit being issued within the code properly.

A motion was made by Mr. Krewson, seconded by Mr. Nagy to **DENY** the appeal and to uphold the issuance of a permit. All of the members voting yea and none voting nay, the motion passed.

5. **Adjourn.**

A motion was made by Mr. Nagy, seconded by Ms. Bender, to **ADJOURN** the meeting at 7:40 P.M. All of the members voting yea, the motion passed.

Signature	Date
	



### Oath

I, the undersigned, hereby agree that the testimony I give at this proceeding will be the truth, the whole truth and nothing but the truth:

PRINT NAME:

SIGN NAME:

1. BEN OCKNER

*[Signature]*

2. STEVEN M. Olt

*[Signature]*

3. Kevin Potter

*[Signature]*

4. Sue Denk

\_\_\_\_\_

5. Judy Heathman

\_\_\_\_\_

6. Angela Brown

*[Signature]*

7. Barb Parker

*[Signature]*

8. R. Emmett Ruma

*[Signature]*

9. \_\_\_\_\_

\_\_\_\_\_

10. \_\_\_\_\_

\_\_\_\_\_

11. \_\_\_\_\_

\_\_\_\_\_

Prepared by: The City of Lakewood Law Department, 12650 Detroit Ave., Lakewood, Ohio 44107

FOR CITY USE ONLY

Lakewood Administrative Procedure: ☐ ABR/BBS/Sign ☐ Citizens Advisory ☐ Civil Service ☐ Dangerous Dog  
☐ Income Tax Appeals ☐ Loan Approval ☐ Nuisance Abatement Appeals ☐ Planning ☒ Zoning Appeals ☐ Other:

Date of Proceeding: Tuesday, November 13, 2012 - Special Meeting



**Schwarz, Johanna**

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**From:** Leigh, Mary  
**Sent:** Friday, November 09, 2012 1:57 PM  
**To:** Barbara Parker  
**Cc:** Benjamin Ockner; Ed Reichek  
**Subject:** RE: Representation for November 13 BZA meeting

Thank you. I will add this to our records.

Mary E. Leigh  
Programs Manager  
Division of Community Development  
Department of Planning and Development  
City of Lakewood  
12650 Detroit Avenue  
Lakewood, OH 44107  
216-529-7681 (Office)

-----Original Message-----

**From:** Barbara Parker [<mailto:barbie-jo@cox.net>]  
**Sent:** Friday, November 09, 2012 1:58 PM  
**To:** Leigh, Mary  
**Cc:** Benjamin Ockner; Ed Reichek  
**Subject:** Representation for November 13 BZA meeting

Mrs. Leigh,

As per our phone conversation today, 11/09/2012:

This is to inform you that Mr. Benjamin Ockner will be the attorney representing me at the meeting, Tuesday, November 13, 2012 in front of the Board of Zoning Appeals for Docket 10-44-12  
16510 Kenneth Lane

Thank you

Barbara J Parker

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## Schwarz, Johanna

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**From:** Leigh, Mary  
**Sent:** Tuesday, November 13, 2012 7:54 PM  
**To:** Schwarz, Johanna  
**Subject:** FW: Board of Zoning Hearing

I believe this homeowner came and read it into the record. Did not see it prior to the meeting.

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**From:** Patricia Neligan Barley [<mailto:neligan@hotmail.com>]  
**Sent:** Tuesday, November 13, 2012 4:21 PM  
**To:** Leigh, Mary  
**Subject:** Board of Zoning Hearing

To: Board of Zoning Appeals  
From: Patricia & Isaac Barley  
1060 Kenneth Drive  
Lakewood, Ohio 44107  
221-1507

November 13, 2012

My husband and I are unable to attend the meeting this evening but we would like our voices heard. I would like to state that for us this issue isn't a "he said she said", or even about being friends with one neighbor or the other. We have been friendly with both the Fannin's and Barb Parker since we moved in in June of 2009. We have been invited to both of their homes and have no problems with either family. That being said, from what I know about the fences in question I find it very hard to believe that the Fannin's were able to put that fence up against Barb Parker's property without first getting permission from the city. I don't understand how someone can buy a house with a lake view and live this way for nearly 20 years just to have another neighbor block their view because why? They want to? They can? What exactly is the purpose of this fence? There is absolutely no purpose as far as I can see. Not only does it not seem legal, but it seems mean spirited and I think Barb should have some rights. This fence is right up against her property.

I can see this fence from my house and it is an eyesore. In addition it makes me wonder what my neighbors will be "allowed" to do should they want to. I barely have a sliver of a lake view but what I have I would like to keep. I certainly do not want any of my 3 neighbors having the ability to fortress me into my own yard.

As a resident of Lakewood living on Kenneth Drive I am concerned about the zoning laws that are in place, or rather not in place that would allow this to happen. I think this fence will adversely affect Ms. Parker's property value, and in return mine.

I am unsure as to why both the Parker's and the Denk's are unable to speak at this hearing and if for some reason I am the only one who e-mailed today it is not that I am alone. All of the neighbors I spoke to feel as we do, they are afraid of retribution if they speak out.

Thank you for your time,

Patricia Barley



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## Schwarz, Johanna

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**From:** Leigh, Mary  
**Sent:** Tuesday, November 13, 2012 7:54 PM  
**To:** Schwarz, Johanna  
**Subject:** FW: OR if permission was given, why was it given? Correction below.

Second email with correction.

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**From:** Patricia Neligan Barley [<mailto:neligan@hotmail.com>]  
**Sent:** Tuesday, November 13, 2012 4:37 PM  
**To:** Leigh, Mary  
**Subject:** OR if permission was given, why was it given? Correction below.

To: Board of Zoning Appeals  
From: Patricia & Isaac Barley  
1060 Kenneth Drive  
Lakewood, Ohio 44107  
221-1507

November 13, 2012

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I can see this fence from my house and it is an eyesore. In addition it makes me wonder what my neighbors will be "allowed" to do should they want to. I barely have a sliver of a lake view but what I have I would like to keep. **I certainly do not want any of my 3 neighbors having the ability to fortress me into my own yard.**

As a resident of Lakewood living on Kenneth Drive I am concerned about the zoning laws that are in place, or rather not in place that would allow this to happen. I think this fence will adversely affect Ms. Parker's property value, and in return mine.

I am unsure as to why both the Parker's and the Denk's are unable to speak at this hearing and if for some reason I am the only one who e-mailed today it is not that I am alone. All of the neighbors I spoke to feel as we do, they are afraid of retribution if they speak out.

Thank you for your time,

Patricia Barley

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## Schwarz, Johanna

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**From:** Leigh, Mary  
**Sent:** Tuesday, November 13, 2012 7:55 PM  
**To:** Schwarz, Johanna  
**Subject:** FW: Fence hearing

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**From:** Patricia Neligan Barley [mailto:[neligan@hotmail.com](mailto:neligan@hotmail.com)]  
**Sent:** Tuesday, November 13, 2012 6:07 PM  
**To:** Leigh, Mary  
**Subject:** FW: Fence hearing

From another neighbor.

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Date: Tue, 13 Nov 2012 14:30:29 -0800  
From: [aeruhlin@yahoo.com](mailto:aeruhlin@yahoo.com)  
Subject: Re: Fence hearing  
To: [neligan@hotmail.com](mailto:neligan@hotmail.com); [barbie-jo@cox.net](mailto:barbie-jo@cox.net); [tjleatherman@me.com](mailto:tjleatherman@me.com); [amendola.susan@gmail.com](mailto:amendola.susan@gmail.com); [ituxhorn@gmail.com](mailto:ituxhorn@gmail.com); [almaynard@att.net](mailto:almaynard@att.net); [djdiemer@sbcglobal.net](mailto:djdiemer@sbcglobal.net); [janran@oh.rr.com](mailto:janran@oh.rr.com); [nicolehamed@gmail.com](mailto:nicolehamed@gmail.com); [pattig29@sbcglobal.net](mailto:pattig29@sbcglobal.net); [ibarley@sbcglobal.net](mailto:ibarley@sbcglobal.net); [suedenk3@aol.com](mailto:suedenk3@aol.com)

I wish I had known about this meeting sooner! I'd like to commend Patricia for her well worded email, and second her thoughts. John and I are in complete agreement that the fence is not only an eyesore, but a mean-spirited attempt to block a view of the lake from Barb's back yard, as well as our own. Please pass that along to your attorney. And GOOD LUCK!

Ann

**From:** Patricia Neligan Barley <[neligan@hotmail.com](mailto:neligan@hotmail.com)>  
**To:** Barb Parker <[barbie-jo@cox.net](mailto:barbie-jo@cox.net)>; Tom & Judy Leatherman <[tjleatherman@me.com](mailto:tjleatherman@me.com)>; Susan Amendola <[amendola.susan@gmail.com](mailto:amendola.susan@gmail.com)>; Ingrid Tuxhorn <[ituxhorn@gmail.com](mailto:ituxhorn@gmail.com)>; angela Maynard <[almaynard@att.net](mailto:almaynard@att.net)>; Ann Ruhlin <[aeruhlin@yahoo.com](mailto:aeruhlin@yahoo.com)>; [djdiemer@sbcglobal.net](mailto:djdiemer@sbcglobal.net); [janran@oh.rr.com](mailto:janran@oh.rr.com); Nicole Hamed <[nicolehamed@gmail.com](mailto:nicolehamed@gmail.com)>; Patti Geiger <[pattig29@sbcglobal.net](mailto:pattig29@sbcglobal.net)>; isaac barley <[ibarley@sbcglobal.net](mailto:ibarley@sbcglobal.net)>; Sue Denk <[suedenk3@aol.com](mailto:suedenk3@aol.com)>  
**Sent:** Tuesday, November 13, 2012 4:23 PM  
**Subject:** RE: Fence hearing

Here is my letter Barb! Good luck! I wish I would have known earlier or made some calls earlier to be of more help?

To: Board of Zoning Appeals  
From: Patricia & Isaac Barley  
1060 Kenneth Drive  
Lakewood, Ohio 44107  
221-1507

November 13, 2012

My husband and I are unable to attend the meeting this evening but we would like our voices heard. I would like to state that for us this issue isn't a "he said she said", or even about being friends with one neighbor or the other. We have been friendly with both the Fannin's and Barb Parker since we moved in in June of 2009. We have been invited to both of their homes and have no problems with either family. That being said, from what I



know about the fences in question I find it very hard to believe that the Fannin's were able to put that fence up against Barb Parker's property without first getting permission from the city. I don't understand how someone can buy a house with a lake view and live this way for nearly 20 years just to have another neighbor block their view because why? They want to? They can? What exactly is the purpose of this fence? There is absolutely no purpose as far as I can see. Not only does it not seem legal, but it seems mean spirited and I think Barb should have some rights. This fence is right up against her property.

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Thank you for your time,

Patricia Barley

> From: [barbie-jo@cox.net](mailto:barbie-jo@cox.net)

> Subject: Fence hearing

> Date: Tue, 13 Nov 2012 10:38:28 -0500

> To: [tjlcaetherman@me.com](mailto:tjlcaetherman@me.com); [amendola.susan@gmail.com](mailto:amendola.susan@gmail.com); [ituxhorn@gmail.com](mailto:ituxhorn@gmail.com); [almaynard@att.net](mailto:almaynard@att.net); [acruhlin@yahoo.com](mailto:acruhlin@yahoo.com); [djdiemer@sbcglobal.net](mailto:djdiemer@sbcglobal.net); [janran@oh.rr.com](mailto:janran@oh.rr.com); [nicolehamed@gmail.com](mailto:nicolehamed@gmail.com); [pattig29@sbcglobal.net](mailto:pattig29@sbcglobal.net); [neligan@hotmail.com](mailto:neligan@hotmail.com); [ibarley@sbcglobal.net](mailto:ibarley@sbcglobal.net); [suedenk3@aol.com](mailto:suedenk3@aol.com)

>

> Hi to all,

>

> I know this is last minute, but I did want to get it out anyway.

>

> Today, Tuesday November 13th, at 6:30 pm we have our hearing (again) before the Lakewood Board of Zoning Appeals. Our attorney, Ben Ockner will be representing us on the legality of the permit. That is what his job is. If any of you have the time or the inkling to attend the meeting, in support of us, or speak out to the board about your feelings of the fence being constructed, we would appreciate it.

> If you don't want to attend, you can email the secretary of the board your thoughts. She will read them at the meeting. We (the Denks and myself) can not speak about anything. (Can you believe that I can't talk!) .

>

> The secretary's email is: [Mary.Leigh@Lakewoodoh.net](mailto:Mary.Leigh@Lakewoodoh.net)

>

> Thanks for your time and support!

>

> Barb Parker

> Ed and Sue Denk

>

>



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"Exhibit P"



GERNS - OCKNER - FREEDMAN



# BERNS, OCKNER & GREENBERGER, LLC

Jordan Berns  
Sheldon Berns  
Timothy J. Duff  
Paul M. Greenberger  
Benjamin J. Ockner  
Gary F. Warner\*

Attorneys at Law  
3733 Park East Drive - Suite 200  
Beachwood, Ohio 44122-4334  
Telephone 216-831-8838  
Fax 216-464-4489

Extension 203  
bockner@bernssockner.com

\*Also admitted in California

November 8, 2012

Dru Stiley, Director  
City of Lakewood Department of Planning and Development  
12650 Detroit Avenue  
Lakewood, Ohio 44107

Re: Appeals of Edward and Mary Sue Denk, and Barbara Parker, (Nos. 10-43-12, 10-44-12)  
From Building Permit P12-003814, August 22, 2012 (the "Permit")  
Fence for George and Phyllis Fannin, 16510 Kenneth Lane (the "Premises")

Dear Mr. Stiley:

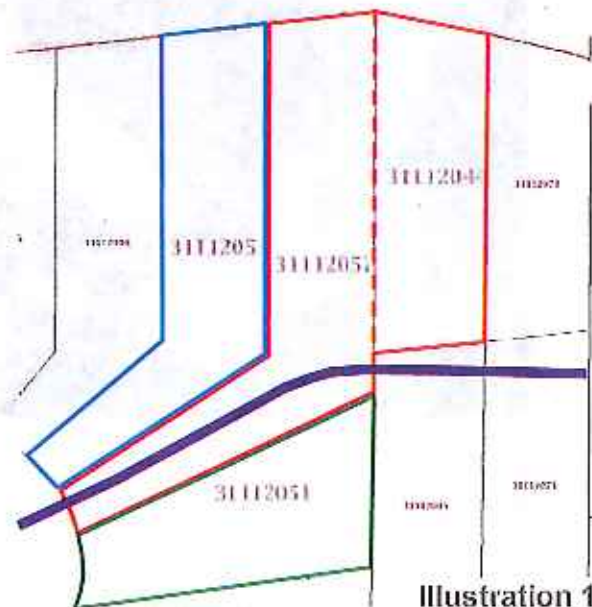
This correspondence further supplements the arguments of Mr. and Mrs. Denk and Ms. Parker ("Appellants") in the referenced appeals. On behalf of Appellants, I respectfully request that you provide the enclosed copies of this correspondence to the members of the Board of Zoning Appeals for their consideration in advance of the Board's next meeting.

## I. THE RELEVANT PROPERTIES

The Premises (outlined in red in Illustration 1) consist of permanent parcel numbers 311-12-044 ("Parcel 44," identified on the County Auditor website as the Fannins' residence), and 311-12-052 ("Parcel 52," with no specific data on the County Auditor website, as shown in Appendix A hereto, other than as being "listed with" Parcel 44 for taxes).

Mr. and Mrs. Denk own the real property at 1039 Kenneth Drive (p.p. no. 31112053, outlined in blue), and Ms. Parker owns the real property at 1047 Kenneth Drive (p.p. no. 31112051 outlined in green).

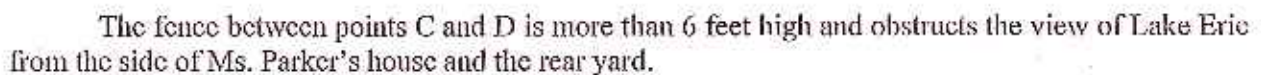
In addition to the Fannins', there are three other homes on Kenneth Lane. Kenneth Lane (indicated by the purple line) is a private right-of-way and subject to one or more easements of record for ingress, egress, and other purposes.<sup>1</sup>



<sup>1</sup> Mr. and Mrs. Fannin's rights under the easements to cause a fence to be constructed are in dispute, although such a dispute clearly is not within this Board's purview.



The Permit authorizes the construction of a fence that extends 132 feet along the west boundary line of the Premises as indicated in brown between points A and B on Illustration 2 (already built); extends 100 feet along the south side of Kenneth Lane as indicated in brown between points C and D on Illustration 2 (already built); and extends 67 feet along the north side of Kenneth Lane as indicated in brown between points E and F on Illustration 2 (not yet built).



The Denks' house and the Fannins' are next door to each other. They both face south. The

Denks' house is closer to Kenneth Drive than the Fannins'. Even though there is no fence on the Denks' property, the Denks' view south from their front door will be obstructed by the Fannins' fence.

### III. THE ISSUES

Appellants have presented two objections to the Permit:

1. It wrongly authorizes construction of a fence in front of the Premises building line in violation of LCO §§1133.02(a) and 1153.02(a) (the "Building Line Issue"); and
2. It wrongly authorizes construction of a fence closer than 18 inches to one or more lot lines in violation of LCO §1121.10(a)(2) (the "Setback Issue").

In considering these issues, particularly in light of the positions staked out by the City at the October 18, 2012 hearing, Appellants urge you to recall the following from LCO 1133.09(a):

*Lakewood* consists of very distinctive neighborhoods that were settled at different times during its development each with its own distinctive housing patterns, which are reflective of the time period during which these neighborhoods were nurtured during the growth of the *City*. Many of these residential neighborhoods are easily recognizable by their consistency of characteristics such as height, set backs and side yards as well as their distinctive exterior façade design elements including, but not limited to, porches and steps, masonry, stoops, cornices and trims, doors and windows and other architectural styles and features, which over the years created a neighborhood environment and streetscape that brought neighbors together.

In a correspondence from the Ohio Historic Preservation Office dated May 5, 1992, their opinion is that the entire *City* constitutes a single historic district, eligible for listing in the National Register of Historic Places. As stated in their letter, "The *City* is significant as a late nineteenth and early twentieth century streetcar suburb. The *City* is also unique in that for a community of its size and density it retains remarkable integrity to convey both its historic and architectural significance."

As a result of the Ohio Historic Preservation findings, the *City* encourages conservation, preservation, redevelopment, and revitalization of residential neighborhoods to preserve their unique environments and for the public welfare of the *City*. The *City* acknowledges as a matter of public policy that the preservation and protection of residential neighborhoods is required for the health, safety and welfare of the people.

The positions taken by the City in these appeals are plainly at odds with these cogent observations. The fact that they preface code provisions governing the demolition or removal of residential structures does not alter their meaning or make them irrelevant to these appeals.



A. The Building Line Issue

LCO 1133.02(a) expressly enjoins the construction or placement of any structure or portion thereof in front of the "building line." As defined in LCO 1103.02(iii), "structures" include "fences." Therefore, LCO 1133.02(a) prohibits the construction or placement of a fence or any portion thereof in front of the "building line."

Fences "as regulated by Chapter 1153" are permitted accessory uses in the City's RH zoning district "when located on the same lot with a permitted principal use." LCO 1121.03(g).<sup>2</sup>

The regulations applicable specifically to fences in LCO Ch. 1153 are in accord with LCO 1133.02(a): "No fence, or living fence greater than thirty-six (36) inches above grade, shall be erected, placed, or extended in front of the building line...." LCO 1153.02(a) (Emphasis added.)

The limited exceptions set forth elsewhere in LCO 1153.02(a) (applicable to fences on residential lots that abut lots containing non-residential uses) and in LCO 1153.02(d) (applicable to decorative fences that are "parallel to the public right-of-way") are not applicable here. The Appellants' properties do not contain non-residential uses. And the fence authorized by the Permit is not parallel to any public right of way.

Accordingly, if the Fannins' fence is in front of the "building line," then it is prohibited, and the Permit must be revoked and the fence removed.

1. What the "building line" is...

LCO 1103.02(r) defines "building line" as:

a line parallel to a public or private right-of-way measured from same the distance in feet as shown on the *Building Line Map*.

(Underlining added.) The phrase "as shown on" refers to "distance in feet."

The Building Line Map does not indicate a specific building line distance for every street or parcel of land in the City. It indicates no specific building line distances for homes on Kenneth Lane (including Parcel 44, the Fannins'), North Clifton Drive or Edgewater Lane, for homes on the east side of Olive Avenue (south of Delaware Avenue), or for the homes at the northernmost ends of Parkside Drive, Roy Drive, Erie Cliff Drive, and Forest Cliff Drive.

The City contends that the absence from the Building Line Map of any indication of a specific distance for a particular street or property means that there is no "building line" for that street or property. No distance is indicated for Kenneth Lane on the Building Line Map; therefore, the City's

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<sup>2</sup> Parcel 44 is identified in the County Auditor website as the lot on which the Fannins' residence - their "principal use" - is located. No part of the fence, however, is located on Parcel 44.

argument goes, there is no building line which limits the location of the Hamins' fence.

The argument has no support in the Lakewood Code or in logic.

2. The absence from the Building Line Map of a specific building line distance for a particular street or property cannot mean there is no building line for that street or property.

The "building line" is a line.

It has two relevant qualities.

It is parallel to the right-of-way (public or private) on which a particular property is located.

And it is some distance away from that right-of-way.

The purpose of the Building Line Map is to specify the distance between the building line and the right-of-way to which it is parallel. It does not identify, and does not purport to identify, the specific building line on each and every lot in the City. If that were its function, the Lakewood City Council would have stated as much.

Therefore, the absence from the Building Line Map of a specific distance for a parcel or street does not mean, and cannot have been intended to mean, that there is no building line for that parcel or street.

In fact, the Lakewood City Council has indicated that every lot in the City's R1H zoning district and others must have a "building line," even if there is no specific distance indicated for it on the Building Line Map.

The Code prescribes minimum front yards for the City's I Industrial District (LCO 1131.08(a)), C1 Office District (LCO 1129.06), C2 Retail District (LCO 1129.06), C3 General Business District (LCO 1129.06), C4 Public School District (LCO 1129.06), ML Multi-Family District (LCO 1127.07), MH Multi-Family District (LCO 1127.07), Lagoon District (LCO 1125.07), R2 Single- and Two-Family District (LCO 1123.07), R1L Single-Family Low Density District (LCO 1121.07), R1M Single-Family Medium Density District (LCO 1121.07), and R1H Single-Family High Density District (LCO 1121.07), and with the exception of the I District, explicitly states that each lot in those districts must conform to those minimum front yard requirements.

LCO 1103.02(rrr) defines "front yard" as:

the unoccupied area between the public or private right-of-way and the building line.

(Emphasis added.) If a "front yard" is required on a particular lot, then there must be a "building line" for that lot some distance away from the right-of-way.

In the City's Lagoon and Commercial zoning districts, minimum front yards are determined by the Building Line Map. (LCO 1125.07, 1129.06.)

In the City R1 and R2 zoning districts, the minimum front yard (and, accordingly, the location of the building line) may be determined with reference to the Building Line Map, or it may be determined by "the average of the existing front yard depths on the abutting properties as measured from the front foundation wall." (LCO 1121.07, 1123.07.)

In the City's R1H district, a lot must have a front yard, and therefore, by definition, a building line, whether the Building Line Map indicates a specific distance for that lot, or the street on which it is located, or not.

The absence from the Building Line Map of a specific building line distance for properties or streets in the R1 or R2 zoning districts does not mean there is no building line for those properties or streets. It simply means that the location of the building line vis-à-vis the right of way must be determined by some means other than consulting the Building Line Map.

3. The absence from the Building Line Map of a specific distance for a particular street or property does not mean that the distance is 0.

On September 20, 2010, the Lakewood City Council passed Ordinance No. 51-10 to amend the Building Line Map to establish "a building line of 0-5 feet along the entire length of both Detroit Avenue and Madison Avenue within the City." LCO 1105.03. So the absence from the Building Line Map of any indication of the "building line" distance on some streets or properties does not mean that the City Council intended for the "building line" on those streets or properties to be "0" nor is such an assumption reasonable. If that were Council's intention, then, as was done with Detroit and Madison, the Building Line Map could have been revised to reflect a "building line" of "0" or "0-5."

OR, a note may have been added to the Building Line Map to the effect that where no "building line" is indicated, then the "building line" is "0."

OR, the definition of "building line" could have been amended to address the situation.

OR, some other amendment could have been made to the Code.

4. That Kenneth Lane is a private right-of-way is irrelevant.

The Building Line Map identifies one or more private drives and rights-of-way, including Edgewater Lane and North Clifton Drive, for which it specifies no building line distance. While it does not reference Kenneth Lane, virtually every other official map of the City does, including the Zoning Map, the 2011 Ward Map, the 2012 Housing Survey Map, the Parcel Map, and the 2012 Pavement Condition Rating Map.

As defined by the Lakewood Code, a building line can be on, parallel to, and some distance from, either a public right-of-way or a private right-of-way. LCO 1103.02(r). There is nothing in

the Lakewood Code which expressly or implicitly exempts parcels on private rights-of-way in the City's R1 and R2 zoning districts from the minimum front yard requirements in LCO 1121.07 or 1123.07.

That a parcel is located on a private right-of-way does not and cannot mean that that parcel has no building line, even if the Building Line Map indicates no specific building line distance for that private right-of-way or properties on it.

5. The City's contrary analysis could have disastrous consequences.

a. Consider Horace Mann Elementary School.

One of the private rights-of-way in the City for which the Building Line Map indicates no specific building line distance is North Clifton Drive. (Illustration 3.) North Clifton Drive is just north of the Horace Mann Elementary School. (Illustration 4.)

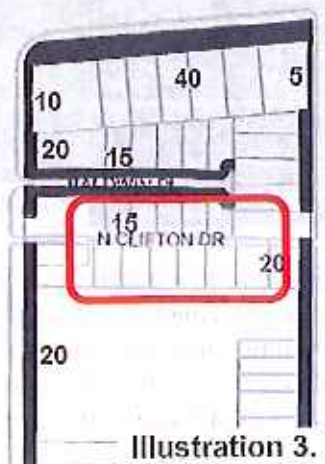


Illustration 3.



Illustration 4.

The Drive is of special concern to the Horace Mann community, as evidenced by the following warning from the school's newsletter, the Horace Mann Educator:<sup>3</sup>

ARRIVAL AND DISMISSAL: North Clifton Drive is a private street and traffic is limited to residents only. **PLEASE DO NOT USE NORTH CLIFTON DRIVE AS A ROUTE TO HORACE MANN.** Many children live on the street and non-resident traffic creates a significant safety concern. Thank you.

Presumably, the City will stipulate that the absence from the Building Line Map of a specific building line distance for one private right-of-way must have the same consequences for another private right-of-way for which the Building Line Map indicates no specific building line distance.

<sup>3</sup> This is taken from page 2 of the October 2011 Educator.



Assuming that is the case, then the rationale the City urges in its defense of the Permit in these Appeals means that each and every property owner on North Clifton Drive can build a six foot high fence out to the right-of-way.

b. ... And Hayes Elementary School.

The situation at Hayes Elementary School is even worse. Unlike Horace Mann (which is in the R2 zoning district), Hayes Elementary School is located in the R1H zoning district, like the Premises. The Building Line Map (Illustration 5) indicates no building line distance for a group of homes on the east side of Olive Avenue, south of Delaware Avenue, directly across from the Hayes Elementary School playground. (Illustration 6.)

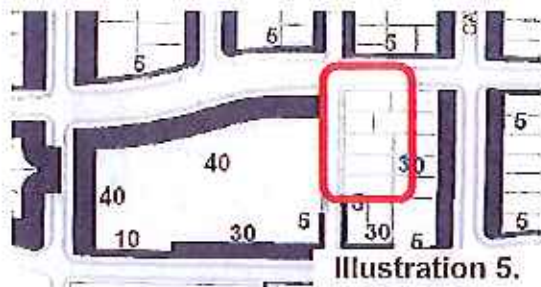


Illustration 5.



Illustration 6.

Once again, if the City's rationale for upholding the Permit based on the absence from the Building Line Map of a specific building line distance for properties on Kenneth Lane applies in the analogous situation, where the Building Line Map indicates no building line distance for properties elsewhere in the R1H zoning district, then nothing stops the property owners who live directly across from the Hayes Elementary School playground from building six foot high fences out to the right-of-way line.

c. And Consider Properties Near The Lake...

The Building Line Map also indicates no specific building line distance for any of the properties on Edgewater Lane, or for the homes at the northernmost ends of Parkside Drive, Roy Drive, Erie Cliff Drive, and Forest Cliff Drive. (See Illustrations 7, 8, and 9.)

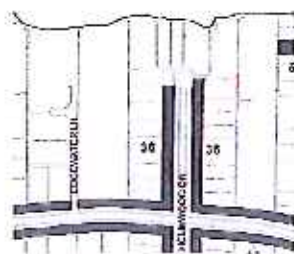


Illustration 7.

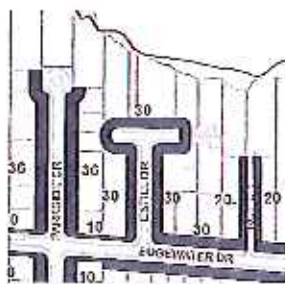


Illustration 8.

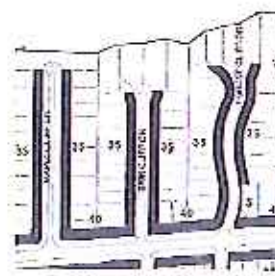


Illustration 9.



Imagine how surprised these homeowners and their neighbors will be to learn that they all can extend six foot high wooden fences from their backyards to their front yards out to the right of way based on the absence from the Building Line Map of a specific building line distance for their properties.

The City's position is faulty in the extreme. It presents an unnecessary and unwarranted potential for danger to school children and poses a genuine risk for the visual scarring of Lakewood's beautiful neighborhoods. It defies logic.

**6. So where can Mr. and Mrs. Fannin put their fence?**

It's in the Code. LCO 1121.07 establishes a building line based on alternative computations of the minimum front yard for homes in the R1H zoning district.

One alternative is based on a front yard determined in accordance with the Building Line Map. That alternative does not apply, here, though, because the Building Line Map indicates no specific building line distance for Kenneth Lane.

The other alternative is based on "the average of the existing front yard depths on the abutting properties as measured from the front foundation wall." And it must take into account the fact that Mr. and Mrs. Fannin's house fronts on Kenneth Lane. So Mr. and Mrs. Fannin can locate their fence to some point (based on the average of the existing front yard depths on the abutting properties on Kenneth Lane) between the front foundation wall of their house and the Kenneth Lane private right-of-way line to which the building line must, by definition, be parallel.

They cannot put it where they have, and the Permit authorizing that placement must be revoked.

**B. The Setback Issue**

LCO §1121.10(a)(2) prohibits the placement of accessory structures made out of wood closer than 18 inches to a lot line. The fence is made out of wood. And the Fannins have located it just six inches off of the Denks' eastern lot line. The Fannins have also located their wood fence within 18 inches of Ms. Parker's northern lot line. They have also been authorized by the Permit to place another section of the fence within 18 inches of the Denks' southern lot line.

The City has taken the position that the Code does not require fences to be at least 18 inches from a lot line, and has asserted that it has never enforced such a requirement. With respect to both of these contentions, the Appellants direct the Board only to the Code. What the Code requires and does not require is based on what is in the Code. And what the City has done in the past should have been in accordance with the Code, and should in this case.

LCO 1221.03(g) allows "fences and living fences" in the R-1H District "as regulated by Chapter 1153."

No provision of LCO Ch. 1153 establishes a specific minimum setback requirement for fences.

Language in one or more provisions of Ch. 1153 mentioning fences located "along," "on," or "immediately adjacent to" a lot line do not amount to a clear statement as to where specifically those fences may be located vis-à-vis the lot line.

LCO 1153.02(i) is specific in its mandate that a fence "be placed entirely within the property line of its respective parcel." But that does not indicate specifically how close to the property line a fence can be located.

LCO 1153.02(c) instructs that fences "on or immediately adjacent to a property line shall not be included in the calculation of total principal or accessory structure lot coverage." But this provision deals only with whether fences in a particular location are to be included in a particular lot coverage calculation. It does not amount to a specific authorization for placing a fence at a specific distance away from or close to a lot line. And in light of LCO 1153.02(i), it clearly is not a specific authorization that fences may be "on" the property line.

Appellants stipulate that, subject to their obligations under any applicable easements over their property, Mr. and Mrs. Rannin may erect a fence on their property so long as the fence is in compliance with applicable provisions of the Zoning Code.

LCO Ch. 1153 applies to fences in any of the City's zoning districts.

That LCO Ch. 1153 prescribes no specific setbacks for fences does not mean that there are no setbacks for fences.

It means only that LCO Ch. 1153 does not regulate the setbacks of fences.

The specific yard and area regulations for the City's various zoning districts include specific setbacks.

For the City's R1H zoning district, LCO 1121.10(a)(2) prescribes a specific minimum setback of 18 inches for accessory structures made of wood. Since "accessory structures" in Lakewood include fences, and since the fence approved by the Permit is made of wood, the fence must be a minimum of 18 inches away from the Denks' and Ms. Parkers' lot line.

#### **IV. CONCLUSION**

In issuing the Permit, the Building Commissioner exercised his power under LCO 1171.01(a) to "interpret the meaning and application" of provisions of the Zoning Code.

Appellants have asked this Board, pursuant to Art. XIII, Sec. 2 of the Lakewood Charter and LCO 1171.04(a), to review that decision and to hear and decide their appeals from it.

These appeals are focused specifically on the meaning and application of specific provisions of

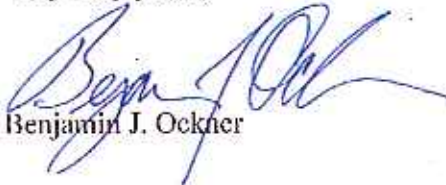
Dru Stiley, Director,  
City of Lakewood Department of Planning and Development  
November 8, 2012  
Page 11 of 11

the Zoning Code. In fulfilling its duties, this Board must be guided by the specific provisions of the Zoning Code. Past practices by building and other officials in the City may be informative in some circumstances. In connection with fences, those past practices may well have been inconsistent with provisions of the Code.

This Board's decision on these appeals may not be inconsistent with the Code.

Accordingly, Mr. and Mrs. Denk and Ms. Parker respectfully urge you to overturn the issuance of the Permit and/or revoke the Permit.

Very truly yours,



Benjamin J. Ockner

cc: Ed and Mary Sue Denk  
Barbara Parker  
Edward Reichck, Esq.  
Steven Ott, Esq.  
Kevin Butler, Esq.

## BERNS, OCKNER & GREENBERGER, LLC

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\*Also admitted in California

November 9, 2012

Via Messenger

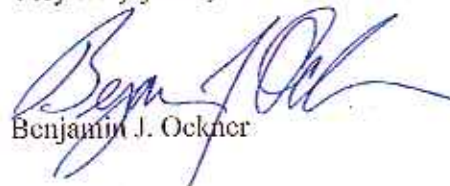
Dru Stiley, Director  
City of Lakewood Department of Planning and Development  
12650 Detroit Avenue  
Lakewood, Ohio 44107

Re: Appeals of Edward and Mary Sue Denk, and Barbara Parker, (Nos. 10-43-12, 10-44-12)  
From Building Permit P12-003814, August 22, 2012 (the "Permit")  
Fence for George and Phyllis Fannin, 16510 Kenneth Lane (the "Premises")

Dear Mr. Stiley:

Attached are two exhibits which were inadvertently omitted from the correspondence I forwarded yesterday in connection with these appeals. I respectfully request that you provide the enclosed copies of these exhibits to the members of the Board of Zoning Appeals for their consideration in advance of the Board's next meeting.

Very truly yours,



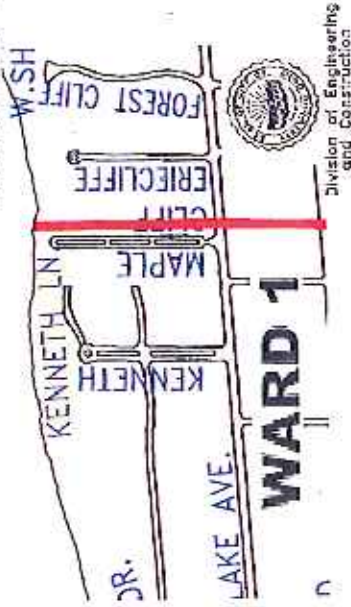
Benjamin J. Ockner

cc: Ed and Mary Sue Denk  
Barbara Parker  
Edward Reichel, Esq.  
Steven Ott, Esq.  
Kevin Butler, Esq.



# WARD 2

## OFFICIAL LAKEWOOD MAPS DESIGNATING KENNETH LANE



# WARD 1

Division of Engineering  
and Construction



Parcel Map  
Division of Engineering  
and Construction  
August 2007



Building Line Map  
City of Lakewood  
2010

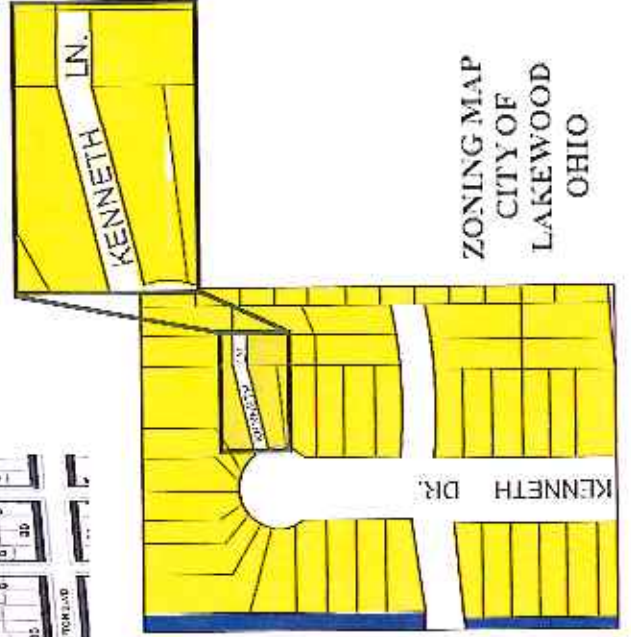


2012 Housing Survey  
CITY OF LAKEWOOD

Geographical Information System  
March 2012



2012 Pavement Condition Rating  
CITY OF LAKEWOOD  
Geographical Information System  
March 2012



ZONING MAP  
CITY OF  
LAKEWOOD  
OHIO



## COUNTY AUDITOR WEBSITE SCREENSHOTS FOR PARCEL 52



Data Not Available For Parcel 311-12-052



CUYAHO  
PAGES: Transfer History Data Not Available For Parcel 311-12-052



CUYAH  
PAGES:

Data Not Available For Parcel 311-12-052



CUYAH  
PAGES:

Data Not Available For Parcel 311-12-052



CUYAH  
PAGE:

Residential Bldg Data Not Available For Parcel 311-12-052

CUYAHOGA COUNTY ASSUMES NO LIABILITY FOR DAMAGES AS A RESULT OF ERRORS, OMISSIONS OR DISCREPANCIES CONTAINED IN THESE PAGES. PROSPECTIVE PURCHASERS SHOULD CONSULT A REAL ESTATE ATTORNEY AND PURCHASE A TITLE INSURANCE POLICY PRIOR TO THE SALE.



PRIMARY OWNER Listed With  
PROPERTY ADDRESS Kenneth Dr, Lakewood, OH 44107  
TAX MAILING ADDRESS Listed With, 1219 Ontario ST, CLEVELAND, OH 44130  
LEGAL DESCRIPTION 31112044  
PROPERTY CLASS LISTED WITH

[Field Definitions](#)

### 2012 (pay in 2013) TAXBILL SUMMARY

PARCEL NUMBER 311-12-052 TAXSET Lakewood TAX YEAR 2012 (pay in 2013)

The tax bill collection period has ended.

Property Values and Current Tax Charges are not available for the selected tax year. Delinquent charges and the flags below may be misrepresented at this time. Amounts due are not final.

FLAGS		ESCROW	
2.0% RED.	N	ESCROW	N
HOMESTEAD	N	PMT. AMOUNT	0.00
FORECLOSURE	N	ACCOUNT	
CERT. PEND.	N		
CERT. SOLD	N		
PAYMENT PLAN	N		

No charges and payments are found for this parcel and tax year.

CUYAHOGA COUNTY ASSUMES NO LIABILITY FOR DAMAGES AS A RESULT OF ERRORS, OMISSIONS OR DISCREPANCIES CONTAINED IN THESE PAGES. PROSPECTIVE PURCHASERS SHOULD CONSULT A REAL ESTATE ATTORNEY AND PURCHASE A TITLE INSURANCE POLICY PRIOR TO THE SALE.

# OTT & ASSOCIATES CO., LPA

ATTORNEYS AT LAW

55 PUBLIC SQUARE, SUITE 1400, CLEVELAND, OHIO 44113  
PHONE: 216.771.2600 FAX: 216.830.8939 www.ottesq.com

STEVEN M. OTT\*  
KIMBERLY M. SUTTER  
AMANDA L. AQUINO  
NICOLE D. LECCLAIR

\*Also admitted to practice in California

November 12, 2012

**VIA HAND DELIVERY**

Mr. Dru Siley, Director  
City of Lakewood Department of Planning and Development  
12650 Detroit Ave.  
Lakewood, Ohio 44107



**RE: Appeals of Edward and Mary Sue Denk (No. 10-43-12) and Barbara Parker (No. 10-44-12) from Building Permit P12-003814, August 22, 2012**

Dear Mr. Siley:

Please be advised that the undersigned represents George and Phyllis Fannin in the above-referenced matter. Please accept this as the Fannins' response to Attorney Benjamin Ockner's supplemental correspondence dated November 8, 2012. The Fannins request that copies of this response be provided to the members of the Board of Zoning Appeals for consideration at the meeting scheduled for November 13, 2012.

**RESPONSE TO APPELLANTS' OBJECTIONS TO THE PERMIT**

1. The Permit does not violate LCO §§1133.02(a) or 1153.02(a) because the location of the fence is not in front of the building line on Kenneth Lane and, therefore, the Permit lawfully authorizes the construction of a fence on the Fannins' property.

Appellants contend that every public and private right-of-way in the City of Lakewood must have a building line that indicates a distance away from that right-of-way.

The "building line" is a line parallel to a public or private right-of-way measured from same the distance in feet as shown on the Building Line Map. The Building Line Map indicates the distance in feet for each building line in the City. Exhibit A depicts the Building Line Map for the area surrounding Kenneth Lane. The Building Line Map indicates a distance in feet of "50" for Kenneth Drive, but does not indicate a distance in feet for Kenneth Lane. Accordingly, the building line for Kenneth Drive is 50 feet and the building line for Kenneth Lane is 0. The building line along Kenneth Lane provides for building up to such line, except as where prohibited in other sections of Code.

Appellants contend that a building line cannot be a distance in feet of 0 and that the location of any building must be determined by some means other than the Building Line Map. Appellants argue that this Board should ignore the Building Line Map and assign a distance in feet to Kenneth Lane by relying on an unrelated section of the Code regulating front yard depth.

LCO §1127.07 establishes minimum yard requirements for principal buildings in the City. Such depth in feet may be calculated by either (1) the distance indicated on the Building Line Map or (2) the average of the existing front yard on the abutting properties as measured from the front foundation wall.

Appellants request this Board to calculate the front yard requirement for Kenneth Lane by the average of the existing front yard on the abutting properties as measured from the front foundation wall and then convert that distance to serve as the building line distance. Essentially, Appellants request this Board use the front yard calculations to create a distance in feet for Kenneth Lane to serve as the building line measurement.

The Fannins urge this Board to confine its ruling to the Building Line Map and not to overstep its boundaries and modify the Building Line Map in a way not intended.

- 2. The Permit does not violate LCO §1121.10(a)(2) because the fence is not required to be 18 inches from the lot line and, therefore, the Permit lawfully authorizes the construction of a fence on the Fannins' property.**

Appellants contend that the fence may not be closer than 18 inches from a lot line in order to conform with LCO §1121.10(a)(2). That section of the Code, however, deals with accessory structures. While a fence may fit into a definition of an "accessory structure," it is clear that LCO §1121.10 was not intended to regulate fences. Rather, fences are "regulated by Chapter 1153."

Appellants are correct when they point out that multiple sections of Chapter 1153 indicate that fences may be "along," "on," or "immediately adjacent to" a lot line. See §1153.02(e). The argument, however, that such indications are not clear enough to determine specifically where a fence may be erected is mistaken.

What is clear is that Chapter 1153 regulates fences and does not contain an 18-inch setback requirement. The Permit relies on §1153.02(i), which requires that fences "be placed entirely within the property line of its respective parcel." Accordingly, the placement of the Fannins fence is within the perimeters of the Code and should be upheld.

In conclusion, the City's Building Commissioner lawfully issued the Permit in accordance with the Code. This Board must decide this appeal on the basis of provisions contained in the Code and may not create new provision for this factual scenario.



Mr. Dru Siley, Director  
City of Lakewood Department of Planning and Development  
November 12, 2012  
Page 3 of 3

The Fannins respectfully request this Board to uphold the issuance of the Permit.

Sincerely,



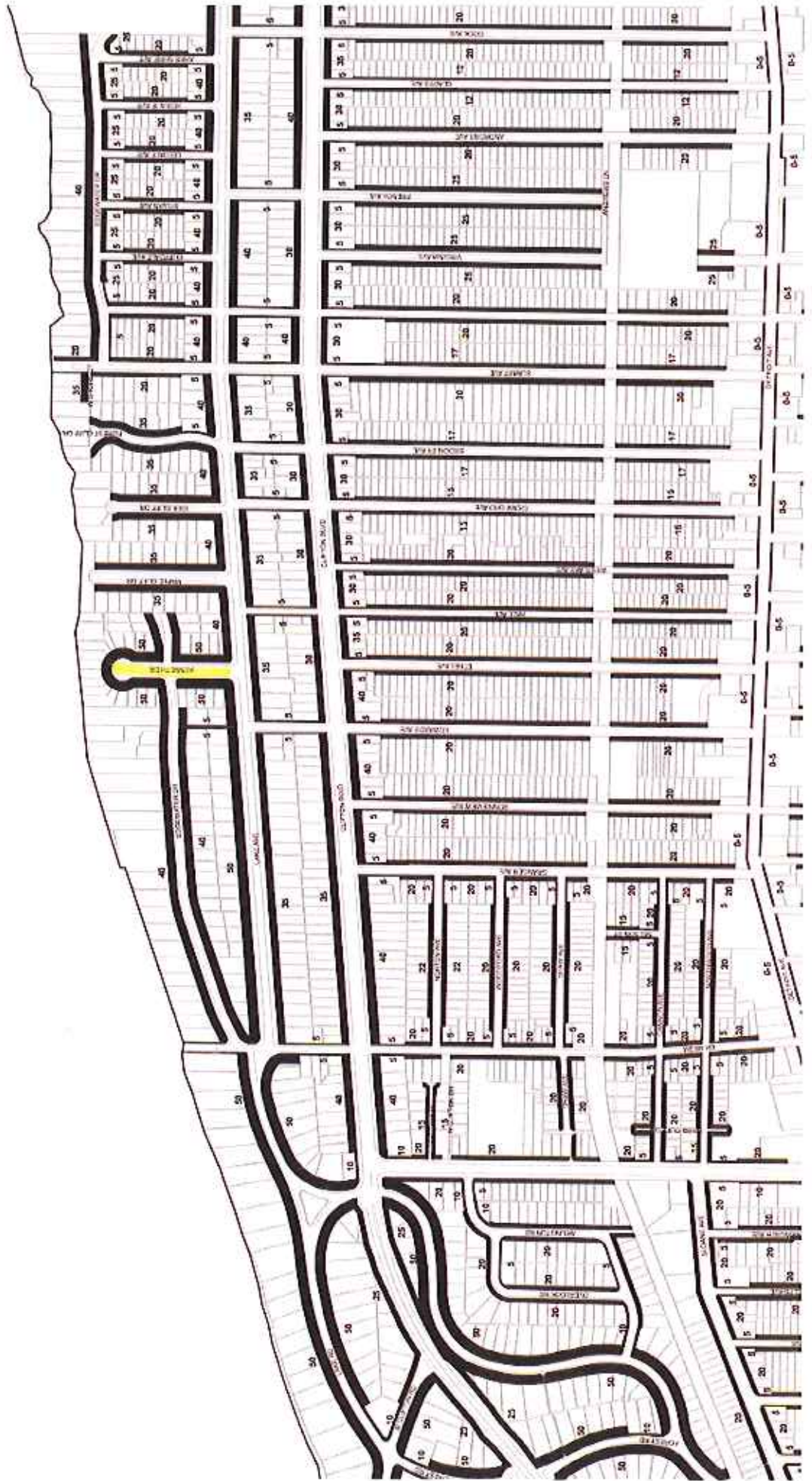
Steven M. Ott

SMO/ala

Enclosure

cc: Kevin Butler (via email at [kevin.butler@lakewoodoh.net](mailto:kevin.butler@lakewoodoh.net))  
Mary Leigh (via facsimile at 216-529-5936)

(1516-300)



ORDINANCE NO. 2261      By Mr. Heidloff

AN ORDINANCE to amend the building line map which is adopted and made a part of Ordinance No. 1786, entitled "An Ordinance providing for the zoning or districting of the City of Lakewood and the regulation of the location, bulk, heights and uses of the buildings and other structures, and repealing Ordinance No. 1479".

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LAKEWOOD, STATE OF OHIO:

Section 1. That the building line map which is made a part of Ordinance No. 1786 and the next proceeding hereto referred to and by Section 21 thereof, in which building line map a part of this ordinance is hereby changed so that the building line of property covering the sub-lot located in the southeast corner of Lincoln and Bayes Avenue be and hereby is changed from its present set-back line, which is 30 feet, to 5 feet and that the building line map is hereby changed and amended.

Section 2. That this ordinance shall be in force and effect on and after the adoption and approval by the Mayor and the earliest period allowed by law, and all provisions of Ordinance No. 1786 inconsistent herewith are hereby repealed.

Adopted: September 2, 1924

James Gormsen  
President

A. I. Kauffman  
Clerk

Approved: E. A. Wiegand  
Mayor



ORDINANCE NO. 2387 By Mr. Hart

AN ORDINANCE to amend Ordinance No. 1786, entitled "An Ordinance providing for the zoning or districting of the City of Lakewood and the regulation of the location, bulk, heights and uses of buildings and other structures and premises, and repealing Ordinance No. 1479" and declaring an emergency.

WHEREAS, for the immediate preservation of the public health and safety it becomes desirable to change the Zoning Ordinance as hereinafter set forth,

THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LAKEWOOD, STATE OF OHIO:

Section 1. That Ordinance No. 1786 entitled "An Ordinance providing for the zoning or districting of the City of Lakewood and the regulation of the location, bulk, heights and uses of buildings and other structures and premises, and repealing Ordinance No. 1479" be amended and supplemented by changing the building line map, same as changed to become a part of this ordinance, the intent being to change the set-back on Riverside Road between the Retail Business Zone and the northerly street lines of Riverside Avenue on the west and Maile Avenue on the east, from ten (10) feet set-back on the west and eight (8) feet set-back on the east, to fifteen (15) feet on both sides of Riverside Road, which change of building line map is hereby approved.

Section 2. This ordinance for the reasons stated in the preamble is hereby declared to be an emergency measure and shall be in full force and effect forthwith and at the earliest period allowed by law.

Adopted: June 15, 1925

James Gormsen

President.

A. I. Kauffman

Clerk

Approved: E. A. Wiegand

Mayor

ORDINANCE NO. 3286 BY Mr. Hurd

An Ordinance to amend Section 21 of Ordinance No. 1786, entitled "An Ordinance providing for the zoning or districting of the City of Lakewood and the regulation of the location, bulk, height and uses of buildings and other structures and premises, and repealing Ordinance No. 1479", and to provide for the establishing of set-back lines in any use district.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LAKEWOOD, STATE OF OHIO:

Section 1. That Section 21 of Ordinance No. 1786 entitled "An Ordinance providing for the zoning or districting of the City of Lakewood and the regulation of the location, bulk, height and uses of buildings and other structures and premises, and repealing Ordinance No. 1479", which reads as follows:

Section 21. FRONT YARDS; BUILDING LINES - For the purpose of establishing front yards and for the purpose of further regulating side yards and the height of buildings near the street line, building lines, as set forth on the building line map which accompanies the ordinance and is hereby declared to be part hereof, are hereby established. The map designations and the map designation rules which accompany said map are hereby declared part thereof. Between a building line and the street line no building or portion of a building, extending above the curb level, may be erected.

1. RESIDENCE DISTRICTS - In a Class 1a or 1b district where the location of the building line is not prescribed on the building line map, building lines are established as follows:

(a) On a street frontage on either side of a street where 50% or more of such frontage between two intersecting streets, but excluding the frontage along the side line of a corner lot or outside such Class 1a or 1b district, is improved with buildings that are set back from the street line or where all the buildings though occupying less than 50% but more than 20% of such frontage are set back from the street line, the alignment of the existing buildings shall be the building line. Minor irregularities in such alignment of existing buildings may be disregarded by the Board of Zoning Appeals in defining and applying this building line regulation or said Board may, when in its opinion the general purpose and intent of this paragraph will be better served thereby, determine that the average distance the existing buildings are back from the street line, either for such entire frontage or for any part thereof, shall be the building line.

(b) On a street frontage on either side of a street between two intersecting streets, but excluding the frontage along the side line of a corner lot or outside of such Class 1a or 1b district, where not more than 20% of such frontage is improved with buildings that are built at the street line and where the provisions of paragraph (1) of this section do not create a building line, the distance of the building line back from the street line shall be 20% of the average or normal depth of the lots having their front lines along such street frontage but such distance back from the street line need not be more than 30 feet. Where in any portion of such street frontage there are lots of markedly less depth than the normal, the Board of Zoning Appeals in defining and applying this building line regulation, may, when in its opinion the general purpose and intent of this paragraph will be better served thereby, divide such street frontage into sections for the application of the above 20% building line requirement.

section, the Council may, on application in a specific case after public notice and hearing, authorize the construction of a building beyond said building line to an extent necessary to secure an appropriate improvement of such parcel of land. On application in a specific case, the Council may after public notice and hearing issue a conditional permit for the construction of a building beyond the building line established by this section, provided the public health, safety, convenience or general welfare will not thereby be injuriously affected or the appropriate use of neighboring property seriously injured.

shall be amended to read as follows:

Section 21. FRONT YARDS, BUILDING LINES - For the purpose of establishing front yards and for the purpose of further regulating side yards and the heights of buildings near the street line, building lines, as set forth on the building line map which accompanies this ordinance and is hereby declared to be part hereof, are hereby established. The map designations and the map designation rules which accompany said map are hereby declared part thereof. Between a building line and the street line no building or portion of a building, extending above the curb level, may be erected.

1. ANY USE DISTRICT

(a) Where, on any street frontage in any use district, a specific building line is indicated on "The Building Line Map of Lakewood" which accompanies this ordinance and is hereby made a part hereof, such building line shall be the front yard line for that street frontage.

(b) Where a specific building line is indicated on the building line maps, but where 60% or more of such frontage, between two intersecting streets is improved with buildings that are nearer the street line than such specified line, the ground level story of a building may be extended out to the average line of the existing buildings on either side thereof.

2. RESIDENCE DISTRICTS - In a Class 1a or 1b district where the location of the building line is not prescribed on the building line map, building lines are established as follows:

(a) On a street frontage on either side of a street where 50% or more of such frontage between two intersecting streets, but excluding the frontage along the side line of a corner lot or outside such Class 1a or 1b district, is improved with buildings that are set back from the street line or where all the buildings though occupying less than 50% but more than 20% of such frontage are set back from the street line, the alignment of the existing buildings shall be the building line. Minor irregularities in such alignment of existing buildings may be disregarded by the Board of Zoning Appeals in defining and applying this building line regulation or said Board may, when in its opinion the general purpose and intent of this paragraph will be better served thereby, determine that the average distance the existing buildings are back from the street line, either for such entire frontage or for any part thereof, shall be the building line.

(b) On a street frontage on either side of a street between two intersecting streets, but excluding the frontage along the side line of a corner lot or outside of such Class 1a or 1b district where not more than 20% of such frontage is improved with buildings that are built at the street line and where the provisions of paragraph (1) of this section do not create a building line the distance of the building line back



(c) Along the side line of a corner lot the distance of the building back from the street line shall be 10% of the average width of such lot, but such distance back from the street line need not be more than 10 feet. No building line shall be required along the side line of a corner lot where the rear of such lot adjoins a street frontage along which no building line is required by this ordinance.

3. APPEALS - Whenever any parcel of land now separately owned and which was so owned prior to the passage of this ordinance is of such restricted area that it cannot be appropriately improved without building beyond the building line established by this section, the Council may, on application in a specific case after public notice and hearing, authorize the construction of a building beyond said building line to an extent necessary to secure an appropriate improvement of such parcel of land. On application in a specific case, the Council may after public notice and hearing issue a conditional permit for the construction of a building beyond the building line established by this section, provided the public health, safety, convenience or general welfare will not thereby be injuriously affected or the appropriate use of neighboring property seriously injured.

Section 2. That said original Section 21 be and it is hereby repealed and this ordinance shall be in full force and effect upon its adoption and approval and at the earliest period allowed by law.

Adopted: April 4, 1932

Morris H. Phillips

President

H. A. Rees

Clerk

Approved: A. I. Kauffman

Mayor

ORDINANCE NO. 4652 BY

Mr. Gottermeyer

AN EMERGENCY ORDINANCE amending and supplementing Ordinance No. 1786 and changing the Building Line Map to the extent and by establishing a definite building line on the south side of Clifton Boulevard between Bunts Road and Chase Avenue.

WHEREAS, an emergency exists in that a permit for improvement of the area has been requested, in that no definite building line has heretofore been established for the area here considered and in order to provide for the public welfare and the usual daily operation of a municipal department, now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LAKEWOOD, STATE OF OHIO:

Section 1. That Ordinance No. 1786 as amended from time to time be, and it is hereby, amended and supplemented by revising the Building Line Map to the extent that the building or set-back line on the southerly side of Clifton Boulevard between Chase Avenue and Bunts Road is hereby established as a line parallel with and thirty (30) feet south of the southerly line of Clifton Boulevard.

Section 2. That the City Engineer be, and he is hereby authorized and directed to change the original Building Line Map to show the building or set-back line as established in Section 1 of this ordinance, which Building Line Map as so changed, is hereby declared to be a part of this ordinance.

Section 3. This ordinance is hereby declared to be an emergency measure for the reasons stated in the preamble hereof and, provided it receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its adoption and approval by the Mayor; and any ordinance or part of any ordinance inconsistent herewith is hereby repealed.

Adopted: March 6, 1950

March 6, 1950

George F. Quinn  
Vice President

H. A. Rees

C. J. Clerk

Approved: March 7, 1950

A. I. Kauffman

Mayor

ORDINANCE NO. 29-67

BY: Messrs. Cain, Gaydos, Huffman,  
Kelley, Ward, Wendling

AN ORDINANCE to amend the Building Line Map as incorporated in Chapter 35 of the Zoning Code of the Codified Ordinances of the City of Lakewood.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LAKEWOOD,  
STATE OF OHIO:

Section 1. That the Building Line Map of the City of Lakewood, Ohio (Revised to 1963) as incorporated in Chapter 35 of the Zoning Code of the Codified Ordinances of the City of Lakewood, Ohio, be and it is hereby amended in the following respects:

- A. The building line in the Class 2d Use Districts located on Madison Avenue shall be fifty (50) feet measured from the center line of Madison Avenue.
- B. The building line in the Class 2d Use District located on Hilliard Road between Northland Avenue and Carabel Avenue on the southerly side thereof and between Woodward Avenue and Madison Avenue on the northerly side thereof shall be forty-five (45) feet measured from the center line of Hilliard Road.

Section 2. The City Engineer is hereby directed to change the Building Line Map of the City of Lakewood, Ohio so as to reflect the amendments designated in Section 1 of this ordinance.

Section 3. This ordinance shall take effect and be in force from and after the earliest period allowed by law and all ordinances or sections thereof inconsistent herewith are hereby repealed.

Adopted: June 19, 1967

Charles S. Huffman, Jr.  
President

Grace Reynolds  
Clerk

Approved: June 19, 1967

Robert M. Lawther  
Mayor



SUBSTITUTION

ORDINANCE NO. 46-67

BY: Messrs. Gaydos, Huffman,  
Usher, Ward and Wendling

AN ORDINANCE to amend Section 1111.12 of the Zoning Code of the Codified Ordinances of the City of Lakewood by changing and revising the Zoning Map and to amend the Building Line Map of the City of Lakewood, Ohio (revised to 1963) as incorporated in Chapter 35 of the Zoning Code of the Codified Ordinances of the City of Lakewood, Ohio, with respect to certain property all as hereafter set forth and described.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LAKEWOOD,  
STATE OF OHIO:

Section 1. That Section 1111.12 of the Zoning Code of the Codified Ordinances of the City of Lakewood be and the same is hereby amended by changing and revising the Zoning Map to the extent that the property described as follows:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio, and known as being part of Original Rockport Township Section No. 22 and bounded and described as follows:

Beginning at a point in the northwesterly corner of Sublot No. 1 in the Lakewood Overlook Allotment as shown by the plat recorded in Volume 66, Page 20, Cuyahoga County Records of Maps; thence southerly along the westerly line of said Sublot No. 1, 190.06 feet to the southwesterly corner thereof; thence easterly along a line parallel with the northerly line of Madison Avenue, 80 feet wide, 57.75 feet to a point; thence northerly and parallel with the first described line to a point on a line parallel with the northerly line of Madison Avenue and measured at right angles 150 feet therefrom; thence in an easterly direction along a line parallel to and 150 feet northerly from the north line of Madison Avenue about 273.74 feet to a point in the westerly line of The Arthur Heights Subdivision as shown by the plat recorded in Volume 67, Page 14, Cuyahoga County Record of Maps; thence northerly along the westerly line of said subdivision about 364.56 feet to a point on the southerly side of Hilliard Avenue; 60 feet wide; thence in a southwesterly direction along the southerly side of Hilliard Avenue 421.53 feet to the place of beginning.

shall be and it is hereby reclassified and changed from 2d-H3-A4 and 1a-H1-A2 to 1E. The Building Line with respect to the above-described property abutting Hilliard Avenue shall be a minimum of twenty-five feet (25').

Section 2. Preliminary development plans for the land described in Section 1 hereof shall be submitted to the Lakewood

The preliminary development plans shall show locations of the proposed buildings, height of buildings, yard, driveways, walks, parking areas and screening therefor and other site improvements, the surrounding streets, present and proposed lot lines and the nearest buildings on adjoining lots.

Section 3. The City Engineer is hereby authorized and directed to make said changes in the Zoning Map and the Building Line Map of the City of Lakewood, Ohio, so as to reflect the amendments designated in Section 1 of this ordinance.

Section 4. This ordinance shall take effect and be in force from and after the earliest period allowed by law and all ordinances or parts of ordinances inconsistent herewith, are hereby repealed.

Adopted: September 5, 1967

Charles S. Huffman, Jr.

President

Grace Reynolds

Clerk

Approved: September 5, 1967

Robert M. Lawther

Mayor

ORDINANCE NO. 26-69

BY: Messrs. Graber, Huffman, Usher,  
Ward, Caydos

AN ORDINANCE to amend Section 1135.01 of the Zoning Code of the Codified Ordinances of the City of Lakewood relating to establishment of building lines.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LAKEWOOD, STATE OF OHIO:

Section 1. That Section 1135.01 of the Zoning Code of the Codified Ordinances of the City of Lakewood, now reading as follows:

Section 1135.01 ESTABLISHMENT OF BUILDING LINES

"For the purpose of establishing front yards and for the purpose of further regulating side yards and the heights of buildings near the street line, building lines, as set forth on the Building Line Map which accompanies this code and is hereby declared to be a part hereof, are hereby established. The map designations and the map designation rules which accompany said map are hereby declared a part thereof. Between a building line and the street lines no building or portion of a building extending above the curb level, may be erected.

The City Engineer is hereby directed to change the Building Line Map to designate a building lines of twenty-five (25') feet on the northerly and southerly sides of Detroit Avenue and Madison Avenue."

be the same is hereby amended so that as amended it shall read as follows:

Section 1135.01 ESTABLISHMENT OF BUILDING LINES

"For the purpose of establishing front yards and for the purpose of further regulating side yards and the heights of buildings near the street line, building lines, as set forth on the Building Line Map which accompanies this code and is hereby declared to be a part hereof, are hereby established. The map designations and the map designation rules which accompany said map are hereby declared a part thereof. Between a building line and the street lines no building or portion of a building, wall or fence shall be erected, placed or extended above the curb level, and no hedge or other living fence shall be permitted to exceed three (3) feet in height above the curb level."

Section 2. That this ordinance shall take effect and be in force from and after the earliest period allowed by law and all ordinances or parts of ordinances inconsistent herewith are hereby repealed.

Adopted: May 5, 1969

George J. Usher  
Vice President

Grace Reynolds  
Clerk



BUILDING LINE OF ELBUR LANE

ORDINANCE NO. 13-75

BY: Messrs. Graber, Magnotto, McBride, Sinagr  
Usher, Brockman, Chinnock

AN ORDINANCE to amend the ~~Building Line Map~~ which was made a part of the Zoning Code under Sections 1101.01 and 1103.04 of the Codified Ordinances of the City of Lakewood, by changing and revising the ~~Building Line Map~~ with respect to all of the properties hereinafter set forth and described.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LAKEWOOD, STATE OF OHIO:

Section 1. That the ~~Building Line Map~~ as made part of the Zoning Code under Section 1103.04 of the Zoning Code of the Codified Ordinances of the City of Lakewood be and it is hereby amended by changing and revising the ~~Building Line Map~~ to the extent that a building line on all the properties described as follows:

Situated in the City of Lakewood, County of Cuyahoga and State of Ohio and known as the R. J. Bacik Subdivision No. 2 being part of Block A in Baily, Brewer and French Subdivision Rockport Township Section as shown in Volume 52, Page 34 of Cuyahoga County Records, more specifically designated as Permanent Parcel Numbers 101, 102, 103, 104, 110, 109, 108, 105, 101, 106 and 15 on Page 4 of Book 115 of the Cuyahoga County Records and subject to all legal highways.

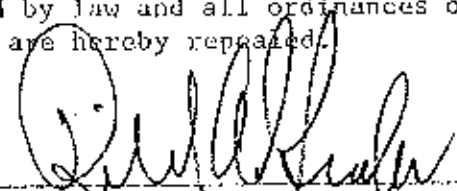
shall be and it is hereby established to be the front line of the foundation of each property hereinabove described having its main access from Elbur Lane.

Section 2. That the City Engineer be and he is hereby authorized and directed to make said changes and revisions to the ~~Building Line Map~~ which changes and revisions made as herein provided, are hereby declared to be a part of this ordinance.

Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law and all ordinances or parts of ordinances inconsistent herewith are hereby repealed.

Adopted:

March 19, 1975

  
President

  
Clerk

Approved:

March 19, 1975

  
Mayor

ORDINANCE NO. 43-76

BY: Messrs. McBride, Salmon, Sinagra, Usher,  
Brockman, Chinnock, Magnotto

AN ORDINANCE to amend the Building Line Map, a part of the Zoning Code under Sections 1101.01 and 1103.04 of the Codified Ordinances of the City of Lakewood, by changing and revising the Building Line Map with respect to all of the properties abutting the hereinafter described streets.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LAKEWOOD, STATE OF OHIO:

Section 1. That the Building Line Map, a part of the Zoning Code under Sections 1101.01 and 1103.04 of the Zoning Code of the Codified Ordinances of the City of Lakewood be and it is hereby amended by changing and revising the Building Line Map to the extent that the building line on the properties abutting the following streets, to wit:

- (1) along the south line of the South Marginal Road of I-90, beginning at the point of its intersection with the south line of Hilliard Road and extending east to a point of its intersection with the north line of Seneca Avenue; and
- (2) along the north line of the North Marginal Road of I-90 beginning at the point of its intersection with the east line of Concord and extending east to the point of its intersection with the west line of Woodward Avenue;

shall be and the same is hereby established to be 50 feet on said South Marginal Road and said North Marginal Road.

Section 2. That the City Engineer be and he is hereby authorized and directed to make said additions to the Building Line Map; which additions made as herein provided are hereby declared to be a part of this ordinance.

Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law and all ordinances or parts of ordinances inconsistent herewith are hereby replaced.

Adopted: July 19, 1976

George J. Usher  
President

Grace Reynolds  
Clerk

Approved: July 19, 1976

Robert L. Smith  
Mayor

ORDINANCE NO. 6-77

BY: Messrs. Brockman, Chincock, Magnotto,  
McBride, Salmon, Sinagra, Usher

AN ORDINANCE to amend the ~~Building Line Map~~, a part of the Zoning Code under Sections 1101.01 and 1103.04 of the Codified Ordinances of the City of Lakewood, by changing and revising the ~~Building Line Map~~ with respect to all of the properties abutting the hereinafter described streets.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LAKEWOOD, STATE OF OHIO:

Section 1. That the ~~Building Line Map~~, a part of the Zoning Code under Sections 1101.01 and 1103.04 of the Zoning Code of the Codified Ordinances of the City of Lakewood be and it is hereby amended by changing and revising the ~~Building Line Map~~ to the extent that the building line on the southwest corner of Lake Road and Clifton Extension having Permanent Parcel No. 6, 7 and 8 of Book 311, Page 3, shall be and the same is hereby changed from 100 feet on said properties to 50 feet.

Section 2. That the City Engineer be and he is hereby authorized and directed to make said additions to the ~~Building Line Map~~, which additions made as herein provided are hereby declared to be a part of this ordinance.

Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law and all ordinances or parts of ordinances inconsistent herewith are hereby replaced.

Adopted:

March 7, 1977

George J. Usher  
President

Grace Reynolds  
Clerk

Approved:

March 8, 1977

William E. Blackie  
Mayor

AN ORDINANCE to amend the Building Line Map, a part of the Zoning Code under Sections 1101.01 and 1103.04 of the Codified Ordinances of the City of Lakewood, by changing and revising the Building Line Map with respect to all of the properties abutting the hereinafter described streets.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LAKEWOOD, STATE OF OHIO:

Section 1. That the Building Line Map, a part of the Zoning Code under Sections 1101.01 and 1103.04 of the Zoning Code of the Codified Ordinances of the City of Lakewood be and it is hereby amended by changing and revising the Building Line Map to the extent that the building line on the properties abutting the following streets, to wit:

- (a) The east side of Magee rear lot line of lots fronting on Madison to south line of Plover; north side of Lake Avenue from Edwards Lane to Clifton Boulevard; both sides of Kenneth and Clifton Road shall be and the same are hereby established to be fifty feet (50).
- (b) North side of Lake Avenue from a point 371 feet west of Cove Avenue extending 426 feet north side including the Marine Towers (east and west) and to Meridian property shall be and the same are hereby established to be four hundred and fifty feet (450).
- (c) North Marginal Road - Concord to Hilliard; Seneca from the rear lot line of the corner lot fronting on Woodward to the rear lot line of the corner lot fronting on Atkins; south side of Delaware from Olive to east side of Woodward; Delaware to Lakewood Heights; and Edgewater both sides from the rear lot line of the corner fronting on Kenneth to the east line of Webb, shall be and the same are hereby established to be forty feet (40).
- (d) Edgewater, Wilbert to Estill, all lots fronting on Edgewater; Ferndale, both sides from rear lot line of lots fronting Madison to rear lot line of lots fronting Athens; Hilda both sides from rear line of lots fronting on Lakewood Heights to rear lot line of lots fronting on Delaware, Adeline, both sides from rear lot lines of lots fronting on Lakewood Heights to the rear line of lots fronting on Delaware, Clifton south side between Andrews and Gladys. Woodward both sides from the rear property line of lots fronting on Hilliard to the rear line of lots fronting on Madison shall be and the same are hereby established to thirty feet (30).
- (e) Clifton both sides from Clifton Road west to Rocky River Bridge and Arthur Avenue both sides north of Detroit to end shall be and the same are hereby established to be twenty-five feet (25).
- (f) Lakewood both sides north of the rear lot line of the lots fronting on the north side of Detroit. Athens south side of street from the rear lot line of lot fronting Glenview to



- (g) Newman, east side from the rear lot line of the lot fronting on the north side of Madison shall be and the same is hereby established to be eighteen feet (18).
- (h) Baldwin, both sides from rear lot line of lots fronting on the east side of West Clifton; Hird west side from the rear lot line of lot fronting on the north side of Detroit to the south side of the railway right of way. Hird east side from the rear lot line of the lot fronting on the north side of Detroit to the rear lot line of the lot fronting on the south side of Clifton shall be and the same is hereby established to be fifteen (15) feet.
- (i) Plover, south side from east line of Magee to west line of Halstead; Halstead west side from the south side of Athens to the south line of Plover; Coutant west side from the rear lot line of lot fronting on Madison to the rear lot line of the lot fronting south side of Franklin; Cohasset Place south sides from rear lot line fronting on Detroit to north end of street; Elbur Lane both sides west from the rear lot line of lots fronting on east side of Elbur to west end of street; Merl south side from rear lot line of lots fronting Giel to the rear lot line of lot fronting on the east side of Manor Park. Edgewater from the rear line of lots fronting on the west side of Nicholson to the east line of Homewood shall be and the same is hereby established to be ten feet (10), except as provided in subsection (A).
- (j) Williamson south side from the west line of Hird to west end of street; Crest Lane south side from rear lot line of lot fronting on east side of Rocky River Drive to the rear lot line of lot fronting on west side of Rockway shall be and the same are hereby established as five (5) feet.

Section 2. That the City Engineer be and he is hereby authorized and directed to make said additions to the Building Line Map, which additions made as herein provided are hereby declared to be a part of this ordinance.

Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law and all ordinances or parts of ordinances inconsistent herewith are hereby replaced.

Adopted: May 7, 1979

Harvey Buchanan  
President

Grace Reynolds  
Clerk

Approved: May 8, 1979

Harold C. Lippin  
Acting Mayor

ORDINANCE NO. 73-88

BY: Brown, Chinnock, Gallagher, Gazzana,  
George, Graham, Wendling

AN ORDINANCE to amend Section 1103.04 of the Zoning Code of the Codified Ordinances of the City of Lakewood by changing and revising the Building Line Map to establish a building line of 50 feet for Parcel B of Permanent Parcel #311-04-008 as hereinafter set forth and described.

WHEREAS, this Council determines that it is in the best interest of public health, safety, and welfare to establish a building line of 50 feet for Parcel B of Permanent Parcel #311-04-008; now, therefore,

BE IT ORDAINED BY THE CITY OF LAKEWOOD, STATE OF OHIO:

Section 1. That Section 1103.04 of the Zoning Code of the Codified Ordinances of the City of Lakewood be and the same is hereby amended by changing and revising the building line map by establishing a building line of 50 feet for Parcel B of Permanent Parcel #311-04-008 described as follows:

Situated in the City of Lakewood, County of Cuyahoga, and State of Ohio, and known as being part of Sublot No. 32 in the Clifton Park Land and Improvement Company's Allotment of part of Original Rockport Township Section No. 23 as shown by the recorded plat in Volume 29 of Maps, Page 11 of Cuyahoga County Records, and bounded and described as follows:

Beginning at a point distant North 75 00' 00" West, 249.0 feet from the Southeasterly corner of said Sublot No. 32; thence North 15 00' 00" East 126.04 feet to the Northerly line of said Sublot No. 32, said point being distant North 68 53' 28" West, 246.08 feet along the Northerly line of Sublot No. 32 from the Northeasterly corner thereof.

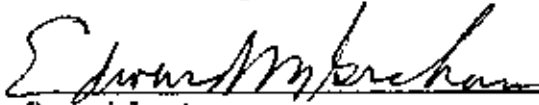
Said Building Line is also described as a line distant Westerly 50. feet and measured parallel to the Westerly line of PARCEL A.

Section 2. The Planning Director is hereby authorized and directed to make the additional change on the building line map of the City of Lakewood so as to reflect the amendment designated in Section 1 of this ordinance.

Section 3. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council, and that all such deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

Section 4. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Adopted: November 21, 1988

  
President



# Board of Zoning Appeals

November 13 2012

Special Meeting







16510 Kenneth Lane

BZA November 13 2012







## I. THE RELEVANT PROPERTIES

The Premises (outlined in red in Illustration 1) consist of permanent parcel numbers 311-12-044 ("Parcel 44," identified on the County Auditor website as the Fannins' residence), and 311-12-052 ("Parcel 52," with no specific data on the County Auditor website, as shown in Appendix A hereto, other than as being "listed with" Parcel 44 for taxes).

Mr. and Mrs. Denk own the real property at 1039 Kenneth Drive (p.p. no. 31112053, outlined in blue), and Ms. Parker owns the real property at 1047 Kenneth Drive (p.p. no. 31112051 outlined in green).

In addition to the Fannins', there are three other homes on Kenneth Lane. Kenneth Lane (indicated by the purple line) is a private right-of-way and subject to one or more easements of record for ingress, egress, and other purposes.<sup>1</sup>

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<sup>1</sup> Mr. and Mrs. Fannin's rights under the easements to cause a fence to be constructed are in dispute, although such a dispute clearly is not within this Board's purview.

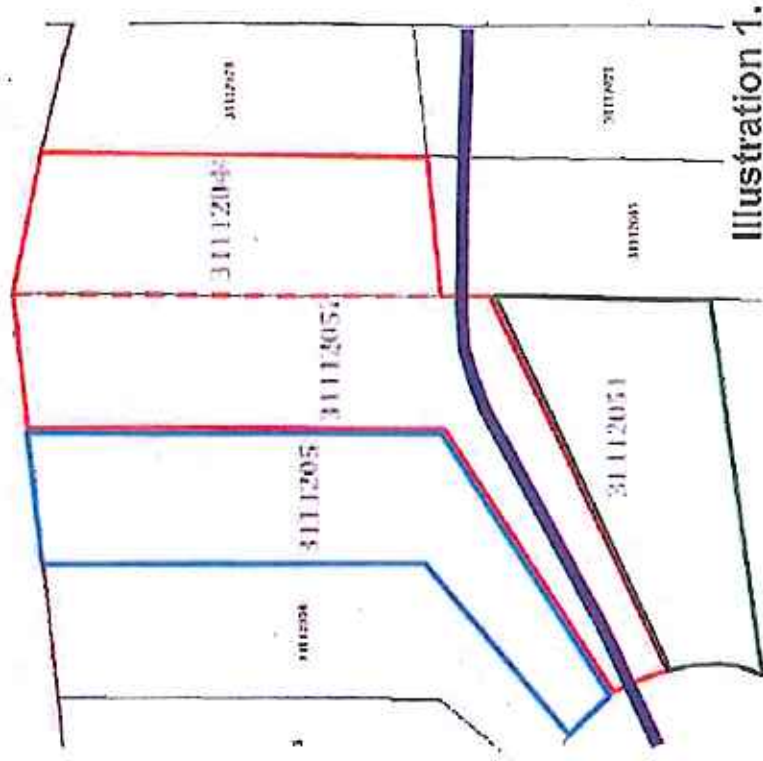


Illustration 1.

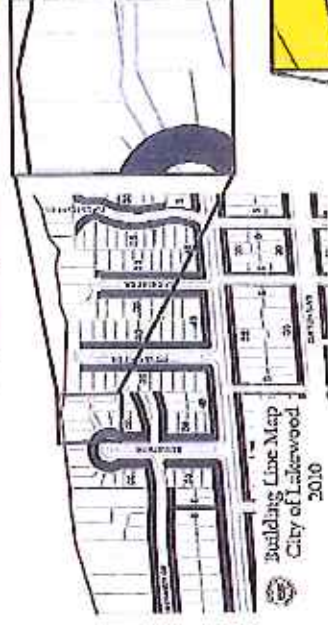
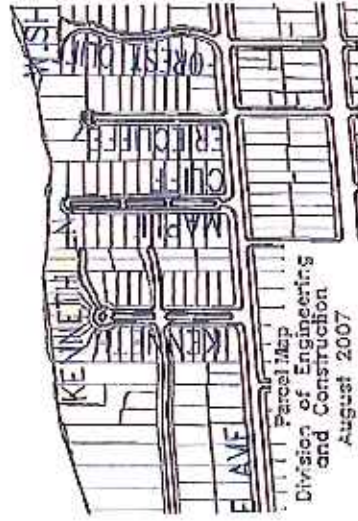
16510 Kenneth Lane

## WARD 2

OFFICIAL LAKEWOOD  
MAPS DESIGNATING  
KENNETH LANE



## WARD 1



ZONING MAP  
CITY OF  
LAKEWOOD  
OHIO

16510 Kenneth Lane



PROPOSAL TO: GEORGE AND PHYLLIS FANNIN CABLE \_\_\_\_\_  
 ADDRESS: 16510 KENNETH LN. CALENWOOD  
 INSTALLATION SITE: 444107 TWP. \_\_\_\_\_

DIRECTIONS

Height 4' AND 6'  
 Style SPACED SAWN

Material WHITE CEDAR  
 Boards 1x4 w/2" SP NO HOLES

Frame 1x4 AND 2x2 w/2" SP  
 Line Posts 1x4 TREATED ON 6' INTERVALS

Terminals 6x4 TREATED w/ ISOPAN POST CAPS (UNAVAILABLE)  
 Gate Posts N/A

Gate Frame N/A  
 Gate Style N/A

Bracing N/A  
 Tension Wire N/A

Post Spacing 8' MAXIMUM  
 Concrete Yes ☒ Yes ☐ No

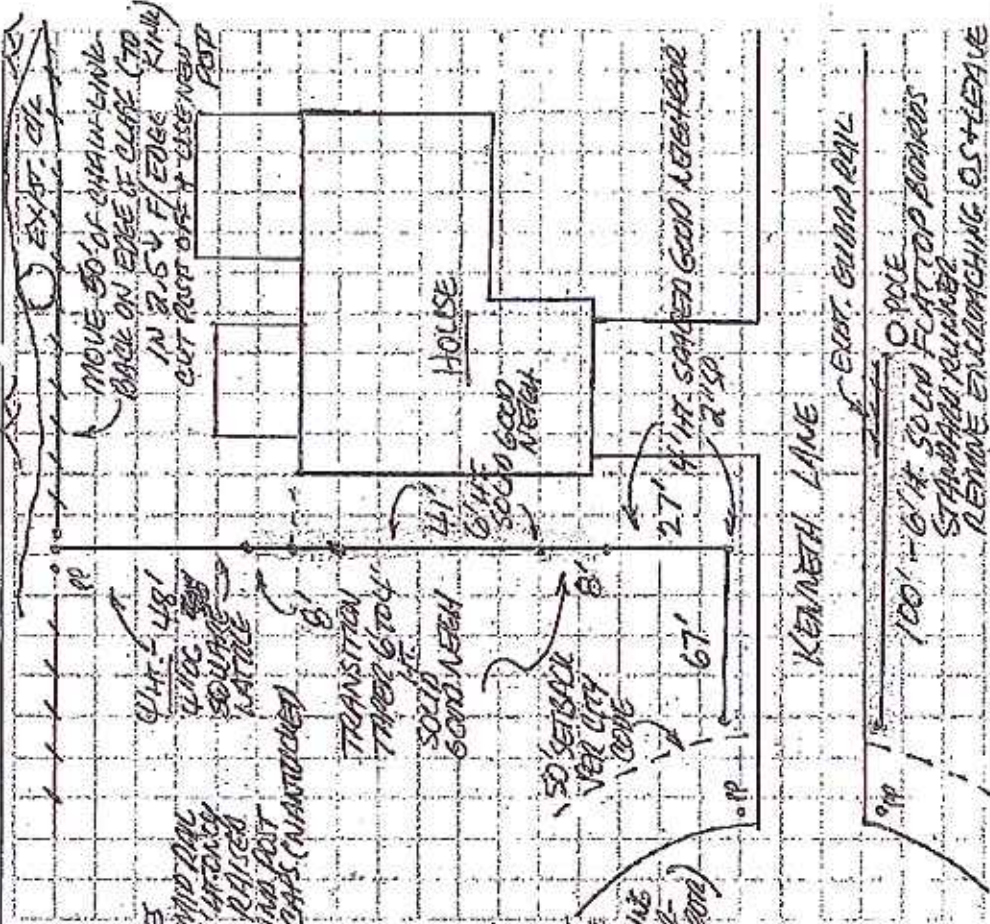
Sealing Depth 30" ☐ 30" ☐ 36" ☐ 42"

Grade 1" OFF GRADE  
 Contour Level Straight

Dirt PUMPED OUT - EAST  
 Clearing REMOVE EXISTING

ON STEEP ENCROACHING  
(BELONGS TO NEIGHBOR -  
LEAVE FOR NEIGHBOR)

Permit ☒ Yes ☐ No Survey ☐ Yes ☐ No  
 Financed ☐ Yes ☐ No  
 Schedule



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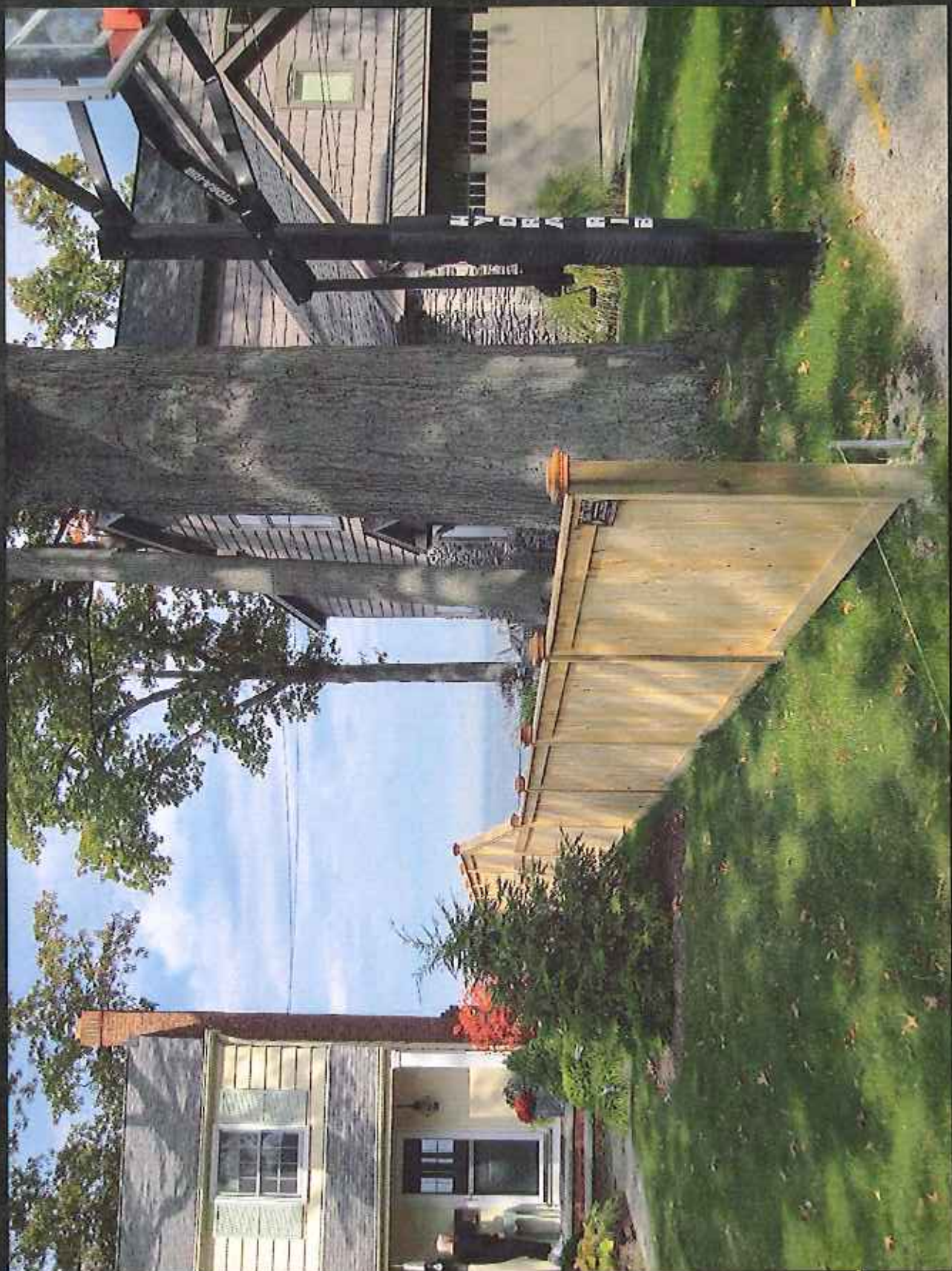
















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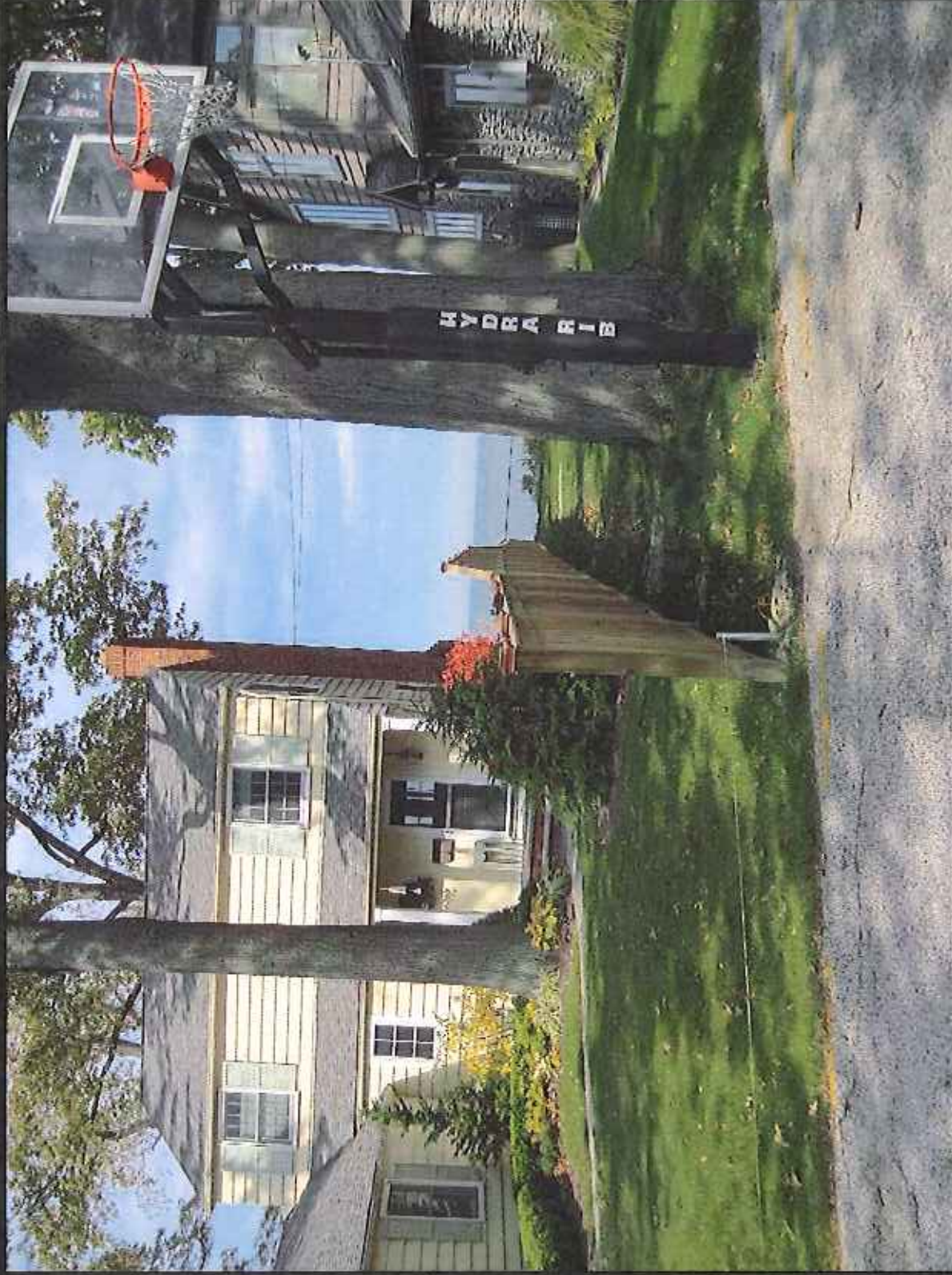




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# Board of Zoning Appeals

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